IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RFA 179 of 1998 alongwith Cross Objections No. 264 of 1998.

Date of decision September 20, 2007

H.P. State Forest Corporation and others …Appellants.

Versus

Sh. Chet Ram …Respondent.

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1] *No.*

For the Appellants: **Shri Nareshwar Chandel, Advocate.**

For the Respondents: **Shri Bimal Gupta, Advocate.**

Dev Darshan Sud, J. (Oral).

This appeal has been preferred by the defendant against the judgment and decree of the learned District Judge partly allowing the claim of the plaintiff- respondent.

Brief facts necessary for determination of this case are that the plaintiff - respondent instituted a suit for recovery against the defendant on the allegation that the defendants contracted with the

---

[1] *Whether reports of Local Papers may be allowed to see the judgment? Yes.*

plaintiff for the carriage of timber and that according to the stipulations of the contract, full price for the carriage of timber had not been paid. The plaintiff had claimed a sum of Rs.2,21,500/- as the balance due and outstanding from the defendants. The defendants resisted the suit submitting that the plaintiff was required to carry 3800 cubic meters of timber, but he did not fulfill his part of the contract and the remaining work had to be completed through another contractor. It was admitted by the defendant that the plaintiff was entitled for additional money for carriage of timber over 3800 cubic meters at the scheduled rates. It was submitted that the defendant had only carried 4177.258 cubic meters of timber for which the amount had been paid. According to the defendant, the plaintiff was entitled only to Rs.4,353.25. The learned District Judge, on a detailed consideration, held that the plaintiff had carried 4669.005 cubic meters of timber. This finding was based on the documents proved on record by the defendant. Ex.R-6 is letter No. FWD/CH/WK/8092, dated 24.1.1989, addressed by the Divisional Manager, Chopal to the Assistant Manager of the defendant at Nerwa, Unit No. 1, stating that Shri

Chet Ram had actually carried 4669.05 cubic meters of timber. The learned trial Court held that not only had the defendants withheld the progress reports which were in their custody but the admission made in Ex.R-6 clearly proved the quantity of timber transported by the plaintiff in terms of the agreement arrived at between the parties. The learned District Judge held that 3800 cubic meters of timber was to be paid at the contracted rate of Rs.37/- per cubic meter while the quantity above that, namely 869.005 cubic meters of timber was to be paid for @ Rs.30/- per cubic meter per kilo meter. While deciding this issue, learned trial Court held that the plaintiff would be entitled to Rs.54,256/- alongwith interest @ 12% per annum.

Learned counsel for the appellant has taken me through the documents and the evidence on record. No document or evidence has been brought to my notice which would show that the quantity which was carried by the plaintiff was less than 4669.005 cubic meters as held by the trial Court. It is also not disputed before me that the plaintiff was entitled to the rate at Rs.30/- per cubic meter per kilo meter and 12.5% commission over and above these charges. Issue which was contested by the appellant-defendant was with respect to the balance payable and whether the quantity of

timber as claimed by the plaintiff was carried by him or not.

A reading of the evidence and especially Ex.R-6 which is a document of the defendants leads to no other conclusion except that the plaintiff – respondent had carried 4669.005 cubic meters of timber. Learned counsel appearing for the appellant has urged that the plaintiff had only transported 4177.258 cubic meters and that the findings of the learned trial Court were contrary to the material on record. I am unable to accept this contention as there is no evidence to support this fact.

Learned counsel for the appellant/ defendant has urged that the interest awarded has been excessive and that there was no evidence on record to show that 12% was the rate for commercial transactions. I find that the plea of the appellant is justified. Priviso to Section 34 of the Code of Civil Procedure states:

> **" Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no**

> **contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions."**

There is no evidence on record to show as to what was the commercial rate. There is no dispute that there is no agreement governing the rate at which interest can be charged. I do not find it proper that interest should be awarded at 12%. In the circumstances, I deem it fit and proper that instead of 12%, interest @ 9% per annum on simple interest basis on the entire decretal amount be awarded. This appeal is accordingly dismissed. There shall be no order as to costs.

Cross Objections 264 of 1998

The plaintiff has filed cross objections claiming 1Rs.17,275/- on account of security deposited with the defendants but not refunded. It is submitted that a sum of Rs.17,275/- was deducted by the appellant which is not in accordance with law. The learned District Judge has noticed that this amount has in fact been deducted but while granting relief, has ignored the fact that this amount was refundable to the plaintiff. The second claim of the plaintiff relates

to a sum of Rs.22,120.90 which relates to commission @ 12.5% on the excess amount of timber transported above 3800 cubic meters by the plaintiff.

These cross objections deserve to be allowed to the extent that the plaintiff is held entitled to both these amounts, as admittedly a sum of Rs.17,275/- has been received by the defendants and wrongly deducted from the payments made to the plaintiff. There is no material on record to show the entitlement of the defendants to this amount or justification for deduction of security. Learned District Judge has also erred in not allowing 12.5 % as commission charges which are otherwise admissible to the plaintiff. This commission is not denied in the pleadings by the defendants. I, therefore, hold that the plaintiff is entitled to a sum of Rs.22,120.90 and Rs.17,275/- over and above the amount decreed by the learned District Judge. The other claims which have been advanced by the plaintiff namely that the scheduled rate would be applicable for 1966.302 cubic meters of timber cannot be accepted as there is no material on record to justify this submission.

The appeal and the cross objections are accordingly disposed of with the direction that the

plaintiff will be entitled to Rs.22,120.90 and Rs.17,275/- over and above the amount granted by the learned District Judge. The entire amount shall carry interest @ 9% per annum from the date of suit till payment on simple interest basis. There shall be no order as to costs.

September 20, 2007(PC). (Dev Darshan Sud), J.